

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 380

Introduced by Senator Padilla

February 20, 2013

An act to ~~add, repeal, and add~~ *and repeal* Section 7908 of the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Padilla. Communications: service interruptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill, *until January 1, 2020*, would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require the order to clearly describe the specific service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected and be narrowly tailored to the specific circumstances under

which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of service only for as long as is reasonably necessary, require that the interruption cease once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communications service provider to cease the interruption. ~~The bill would provide that a good faith reliance upon an order of a judicial officer or a signed statement of intent to apply for a court order, as prescribed, constitutes a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.~~

~~This~~

The bill would authorize a governmental entity, until January 1, 2016 2020, to interrupt communications service without first obtaining a court order if it reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, and it complies with other specified requirements including, applying for a court order within 6 hours after the commencement of the interruption of communications service, as prescribed. If the application is filed after the 6 hours, as the bill would authorize in an emergency, the application would be required to include a specified statement under penalty of perjury. Since perjury is a crime, this bill would impose a state-mandated local program by creating a new crime. Additionally, the bill would require a governmental entity to provide to the provider of communications service and the court a signed statement of intent to apply for a court order signed by an authorized official.

The bill would provide that good faith reliance upon an order of a judicial officer or a signed statement of intent to apply for a court order that the governmental entity assets meets certain requirements constitutes a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

The bill would also find and declare that ensuring that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in

constitutionally protected expression, is a matter of statewide concern, and not a municipal affair, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Preserving the availability and openness of communications
- 4 networks is a bedrock principle of federal and state law and
- 5 essential to commerce, public safety, and democracy.
- 6 (b) With email, data transfers, videoconferencing, e-commerce,
- 7 and myriad online services now a core element of every type of
- 8 economic activity, interruption of communications service deprives
- 9 individuals and enterprises of the ability to participate in the
- 10 modern economy, with significant financial impact even if an
- 11 interruption is of short duration.
- 12 (c) Interruption of communications service threatens public
- 13 safety by depriving persons of the ability to call 911 and
- 14 communicate with family, friends, employers, schools, and others
- 15 in an emergency; deprives persons of the ability to receive wireless
- 16 emergency alerts; and impairs the ability of first responders to
- 17 communicate with each other.
- 18 (d) The right of citizens to freedom of speech under the First
- 19 Amendment to the United States Constitution and Section 2 of
- 20 Article I of the California Constitution extends to speech through
- 21 any technology, from the pamphlets and newspapers of the
- 22 Founding Fathers to the emails, blogs, tweets, and texts of modern
- 23 day citizens using wireless devices.
- 24 (e) The power of new wireless devices and technologies for
- 25 participation in democracy underscores the need to protect First
- 26 Amendment rights and ensure that California and the United States
- 27 do not take the path of oppressive governments around the world

1 that routinely shut down the Internet and wireless networks to
2 silence public protest.

3 (f) Interruption of communications service by a ~~government~~
4 *governmental* entity that prevents citizens from communicating
5 can be a “prior restraint” on speech, which the United States
6 Supreme Court has held bears a heavy presumption of
7 unconstitutionality and is justified only in exceptional
8 circumstances.

9 (g) The California Supreme Court, in *Sokol v. Public Utilities*
10 *Commission* (1966) 65 Cal.2d 247, 265, articulated the standard
11 that any future commission rule for discontinuation of telephone
12 services used for illegal purposes must at a minimum require that
13 police obtain prior authorization to secure the termination of service
14 by satisfying an impartial tribunal that they have probable cause
15 to act, in a manner reasonably comparable to a proceeding before
16 a magistrate to obtain a search warrant.

17 (h) In August 2011, the Bay Area Rapid Transit District (BART)
18 shut down wireless service for three hours in order to quash a
19 public protest relating to a fatal shooting by BART police on a
20 train platform.

21 (i) In December 2011, BART adopted a policy authorizing
22 wireless service shutdowns with no court review and no probable
23 cause requirement, which prompted a public inquiry by the Federal
24 Communications Commission.

25 (j) With more than 85 percent of American adults owning a
26 wireless device, and use of wireless services and platforms
27 expanding every day, protecting these services from interruption
28 is more important than ever in order to protect commerce, public
29 safety, and First Amendment freedoms that are the core of
30 democracy.

31 SEC. 2. Section 7908 is added to the Public Utilities Code, to
32 read:

33 7908. (a) For purposes of this section, the following terms
34 have the following meanings:

35 (1) “Communications service” means any communications
36 service that interconnects with the public switched telephone
37 network and is required by the Federal Communications
38 Commission to provide customers with 911 access to emergency
39 services.

(2) “Governmental entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(3) (A) “Interrupt communications service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area. ~~“Interrupt~~

(B) “*Interrupt communications service*” does not include any interruption of *communications* service pursuant to a customer service agreement, a contract, a tariff, a provider’s internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, *or Section 4575 or* subdivision (d) of Section 4576 of the Penal ~~Code, or an Code.~~

(C) “*Interrupt communications service*” *does not include any interruption of service pursuant to an order to cut, reroute, or divert a landline being used for telephone line or wireless device used or available for use for communication by a person or persons in a hostage or barricade situation pursuant to Section 7907. However, “interruption of communications service” includes any interruption of service resulting from an order pursuant to Section 7907 that affects wireless devices other than those used by, or available for use by, the person or persons involved in a hostage or barricade situation.*

(4) “Judicial officer” means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities of any state or federal court located in this state.

(b) (1) Unless authorized pursuant to subdivision (c), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer obtained prior to the interruption. The order shall include all of the following findings:

1 (A) That probable cause exists that the service is being or will
2 be used for an unlawful purpose or to assist in a violation of the
3 law.

4 (B) That absent immediate and summary action to interrupt
5 communications service, serious, direct, and immediate danger to
6 public safety, health, or welfare will result.

7 (C) That the interruption of communications service is narrowly
8 tailored to prevent unlawful infringement of speech that is protected
9 by the First Amendment to the United States Constitution or
10 Section 2 of Article I of the California Constitution, or a violation
11 of any other rights under federal or state law.

12 (2) The order shall clearly describe the specific communications
13 service to be interrupted with sufficient detail as to customer, cell
14 sector, central office, or geographical area affected, shall be
15 narrowly tailored to the specific circumstances under which the
16 order is made, and shall not interfere with more communication
17 than is necessary to achieve the purposes of the order.

18 (3) The order shall authorize an interruption of *communications*
19 service only for as long as is reasonably necessary and shall require
20 that the interruption cease once the danger that justified the
21 interruption is abated and shall specify a process to immediately
22 serve notice on the communications service provider to cease the
23 interruption.

24 (c) (1) Communications service shall not be interrupted without
25 a court order except pursuant to this subdivision.

26 (2) If a governmental entity reasonably determines that an
27 extreme emergency situation exists that involves immediate danger
28 of death *or great bodily injury* and there is insufficient time, with
29 due diligence, to first obtain a court order, then the governmental
30 entity may interrupt communications service without first obtaining
31 a court order as required by this section, provided that the
32 interruption meets the grounds for issuance of a court order
33 pursuant to subdivision (b) and that the *governmental* entity does
34 all of the following:

35 (A) ~~Apply~~ (i) *Applies* for a court order without delay, ~~and in~~
36 ~~no event later than two~~ *but within six* hours after commencement
37 of an interruption of communications service *except as provided*
38 *in clause (ii).*

39 (ii) *If it is not possible to apply for a court order within six hours*
40 *due to an emergency, the governmental entity shall apply for an*

1 *order as soon as possible, but in no event later than 24 hours after*
2 *commencement of an interruption of communications service. If*
3 *an application is filed more than six hours after commencement*
4 *of an interruption of communications service pursuant to this*
5 *clause, the application shall include a declaration under penalty*
6 *of perjury stating the reason or reasons that the application was*
7 *not submitted within six hours after commencement of the*
8 *interruption of communications service.*

9 (B) ~~Provide~~ *Provides* to the provider of communications service
10 involved in the service interruption *and the court* a statement of
11 intent to apply for a court order signed by an authorized official
12 of the governmental entity. The statement of intent shall clearly
13 describe the extreme emergency circumstances, and the specific
14 communications service to be interrupted with sufficient detail as
15 to the customer, cell sector, central office, or geographical area
16 affected.

17 (C) ~~Provide~~ *Provides* conspicuous notice of the application for
18 a court order authorizing the communications service interruption
19 on its Internet Web site without delay, unless the circumstances
20 that justify an interruption of communications service without first
21 obtaining a court order justify not providing the notice.

22 (d) An order to interrupt communications service, or a signed
23 statement of intent provided pursuant to subdivision (c), that falls
24 within the federal Emergency Wireless Protocol shall be served
25 on the California Emergency Management Agency. All other orders
26 to interrupt communications service or statements of intent shall
27 be served on the communications service provider's contact for
28 receiving requests from law enforcement, including receipt of and
29 responding to state or federal warrants, orders, or subpoenas.

30 (e) A provider of communications service that intentionally
31 interrupts communications service pursuant to this section shall
32 comply with any rule or notification requirement of the commission
33 or Federal Communications Commission, or both, and any other
34 applicable provision or requirement of state or federal law.

35 (f) Good faith reliance by a communications service provider
36 upon an order of a judicial officer authorizing the interruption of
37 communications service pursuant to subdivision (b), or upon a
38 signed statement of intent to apply for a court order that the
39 ~~government~~ *governmental entity* asserts meets the requirements
40 of subdivision (c), shall constitute a complete defense for any

1 communications service provider against any action brought as a
2 result of the interruption of communications service as directed
3 by that order or statement.

4 (g) The Legislature finds and declares that ensuring that
5 California users of any communications service not have that
6 service interrupted, and thereby be deprived of 911 access to
7 emergency services or a means to engage in constitutionally
8 protected expression, is a matter of statewide concern and not a
9 municipal affair, as that term is used in Section 5 of Article XI of
10 the California Constitution.

11 (h) This section shall remain in effect only until January 1, 2016
12 2020, and as of that date is repealed, unless a later enacted statute,
13 that is enacted before January 1, 2016, 2020, deletes or extends
14 that date.

15 ~~SEC. 3. Section 7908 is added to the Public Utilities Code, to~~
16 ~~read:~~

17 ~~7908. (a) For purposes of this section, the following terms~~
18 ~~have the following meanings:~~

19 ~~(1) "Communications service" means any communications~~
20 ~~service that interconnects with the public switched telephone~~
21 ~~network and is required by the Federal Communications~~
22 ~~Commission to provide customers with 911 access to emergency~~
23 ~~services.~~

24 ~~(2) "Governmental entity" means every local government,~~
25 ~~including a city, county, city and county, a transit, joint powers,~~
26 ~~special, or other district, the state, and every agency, department,~~
27 ~~commission, board, bureau, or other political subdivision of the~~
28 ~~state, or any authorized agent thereof.~~

29 ~~(3) "Interrupt communications service" means to knowingly or~~
30 ~~intentionally suspend, disconnect, interrupt, or disrupt~~
31 ~~communications service to one or more particular customers or~~
32 ~~all customers in a geographical area. "Interrupt communications~~
33 ~~service" does not include any interruption of service pursuant to~~
34 ~~a customer service agreement, a contract, a tariff, a provider's~~
35 ~~internal practices to protect the security of its networks, Section~~
36 ~~2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the~~
37 ~~Business and Professions Code, subdivision (d) of Section 4576~~
38 ~~of the Penal Code, or an order to cut, reroute, or divert a landline~~
39 ~~being used for telephone communication by a person in a hostage~~
40 ~~or barricade situation pursuant to Section 7907.~~

1 ~~(4) “Judicial officer” means a magistrate, judge, justice,~~
2 ~~commissioner, referee, or any person appointed by a court to serve~~
3 ~~in one of these capacities of any state or federal court located in~~
4 ~~this state.~~

5 ~~(b) (1) No governmental entity and no provider of~~
6 ~~communications service, acting at the request of a governmental~~
7 ~~entity, shall interrupt communications service for the purpose of~~
8 ~~protecting public safety or preventing the use of communications~~
9 ~~service for an illegal purpose, except pursuant to an order signed~~
10 ~~by a judicial officer obtained prior to the interruption. The order~~
11 ~~shall include all of the following findings:~~

12 ~~(A) That probable cause exists that the service is being or will~~
13 ~~be used for an unlawful purpose or to assist in a violation of the~~
14 ~~law.~~

15 ~~(B) That absent immediate and summary action to interrupt~~
16 ~~communications service, serious, direct, and immediate danger to~~
17 ~~public safety, health, or welfare will result.~~

18 ~~(C) That the interruption of communications service is narrowly~~
19 ~~tailored to prevent unlawful infringement of speech that is protected~~
20 ~~by the First Amendment to the United States Constitution or~~
21 ~~Section 2 of Article I of the California Constitution, or a violation~~
22 ~~of any other rights under federal or state law.~~

23 ~~(2) The order shall clearly describe the specific communications~~
24 ~~service to be interrupted with sufficient detail as to customer, cell~~
25 ~~sector, central office, or geographical area affected, shall be~~
26 ~~narrowly tailored to the specific circumstances under which the~~
27 ~~order is made, and shall not interfere with more communication~~
28 ~~than is necessary to achieve the purposes of the order.~~

29 ~~(3) The order shall authorize an interruption of service only for~~
30 ~~as long as is reasonably necessary and shall require that the~~
31 ~~interruption cease once the danger that justified the interruption~~
32 ~~is abated and shall specify a process to immediately serve notice~~
33 ~~on the communications service provider to cease the interruption.~~

34 ~~(e) An order to interrupt communications service that falls within~~
35 ~~the federal Emergency Wireless Protocol shall be served on the~~
36 ~~California Emergency Management Agency. All other orders to~~
37 ~~interrupt communications service or statements of intent shall be~~
38 ~~served on the communications service provider’s contact for~~
39 ~~receiving requests from law enforcement, including receipt of and~~
40 ~~responding to state or federal warrants, orders, or subpoenas.~~

1 ~~(d) A provider of communications service that intentionally~~
2 ~~interrupts communications service pursuant to this section shall~~
3 ~~comply with any rule or notification requirement of the commission~~
4 ~~or Federal Communications Commission, or both, and any other~~
5 ~~applicable provision or requirement of state or federal law.~~

6 ~~(e) Good faith reliance by a communications service provider~~
7 ~~upon an order of a judicial officer authorizing the interruption of~~
8 ~~communications service pursuant to subdivision (b) shall constitute~~
9 ~~a complete defense for any communications service provider~~
10 ~~against any action brought as a result of the interruption of~~
11 ~~communications service as directed by that order or statement.~~

12 ~~(f) The Legislature finds and declares that ensuring that~~
13 ~~California users of any communications service not have that~~
14 ~~service interrupted, and thereby be deprived of 911 access to~~
15 ~~emergency services or a means to engage in constitutionally~~
16 ~~protected expression, is a matter of statewide concern and not a~~
17 ~~municipal affair, as that term is used in Section 5 of Article XI of~~
18 ~~the California Constitution.~~

19 ~~(g) This section shall become operative on January 1, 2016.~~

20 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
21 ~~Section 6 of Article XIII B of the California Constitution because~~
22 ~~the only costs that may be incurred by a local agency or school~~
23 ~~district will be incurred because this act creates a new crime or~~
24 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
25 ~~for a crime or infraction, within the meaning of Section 17556 of~~
26 ~~the Government Code, or changes the definition of a crime within~~
27 ~~the meaning of Section 6 of Article XIII B of the California~~
28 ~~Constitution.~~